

1 I do not find his case in terms of size of  
2 audience compelling at all.

3 MR. TOSCANO: Mr. Egan, you also  
4 indicated that you disagree with Mr. Brooks'  
5 analysis of the audience makeup. Could you  
6 please explain the basis for that?

7 THE WITNESS: Yes, and I will do  
8 that quickly. So Mr. Brooks pulls from  
9 several different sources different metrics:  
10 age, gender here, income there, blah, blah,  
11 blah, and he patches them together and he says  
12 look, see? The makeup of these audiences is  
13 similar. I have lots of problems with that.  
14 You know, pulling them from different sources  
15 is my first problem. Not having tracking  
16 history is my second problem. Not having  
17 complete data, you know, the important metrics  
18 generally are median age, household income and  
19 gender. Not having all of those on the same  
20 page from the same source, problematic to me.  
21 So I find it patched together and I don't find  
22 it convincing, and in fact even within his own

1 evidence he uses an MRI study and he talks  
2 about gender balance and he uses it to say  
3 that the study shows that both Tennis Channel  
4 and Golf Channel viewing households to be male  
5 skewed. And yet if you look at the data that  
6 he presents Golf Channel is far more male-  
7 oriented. I don't have the number here, but -  
8 well, maybe I do actually. So it shows you  
9 that Tennis Channel is ■ percent men, ■  
10 percent women. We saw from the other data  
11 earlier and also if we had the - oh we do  
12 have, I'm sorry, I apologize. We do have the  
13 MRI data that he's quoting from where he's  
14 saying ■ percent of the Tennis Channel  
15 audience is male. He's got ■ percent and ■  
16 percent of the Golf and Versus respectively  
17 audience as male. He skims right over that as  
18 if that's not a significant difference. It is  
19 a significant difference. If I'm an  
20 advertiser and I'm trying to get to men I'm  
21 going to go with the pure vehicle for the most  
22 part. I'm trying to get to a balanced

1 audience? Tennis Channel is a fine vehicle.

2 So I don't find his evidence compelling, I  
3 don't find his interpretation to be terribly  
4 insightful.

5 So I went to one source, Simmons  
6 Experience. It's on page 51 of my report.  
7 You flip to it, you see a chart. It's got  
8 Tennis Channel, it's got Golf Channel and it's  
9 got Versus each with its own little column  
10 there. Yes, page 51. Okay. So the first  
11 rows are median household income, Tennis  
12 Channel, Golf Channel, Versus, and I've got  
13 two quarters. Simmons Experience report -  
14 reports it either quarterly or biannually, I  
15 forget - semi-annually. I forget which it is,  
16 but they track it. And you can see that it's  
17 very consistent through the time period. Golf  
18 and Versus are rock solid which is not  
19 surprising. The channels have been around for  
20 more than 15 years. People know what they are  
21 and watch. And then Tennis varies from  
22 [REDACTED] to [REDACTED]. Fairly consistent within

1 its range, a lot lower than either of the  
2 other two channels.

3 JUDGE SIPPEL: Do we have anybody  
4 in here who has not signed the oath?  
5 Protective order. Sign.

6 THE WITNESS: Okay, sorry. It is  
7 redacted.

8 (Whereupon, the foregoing matter  
9 went off the record at 11:13 a.m. and went  
10 back on the record at 11:14 a.m.)  
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## CLOSED SESSION

THE WITNESS: Yes, I'll be quick.

As you can see, median age, very different.

Tennis Channel's median age, I'll just use

summer 2010, [REDACTED] years old, Golf Channel older,

[REDACTED], Versus younger at [REDACTED]. And then the

male/female ratios, very similar to the MRI

data. Tennis Channel [REDACTED], pretty gender-

balanced, Golf Channel overwhelmingly male, [REDACTED]

percent male, Versus [REDACTED] percent male. So to

me when I weigh Mr. Brooks' evidence I find it

spotty, I find his interpretation

questionable. When I look at the experience

Simmons stuff, looks pretty clear to me. So

I don't find that he's made a compelling case

in terms of audience makeup similarity either.

(Whereupon, the proceeding  
continued in open session)

## 1 OPEN SESSION

2 MR. TOSCANO: Mr. Egan, in  
3 paragraphs 96 and 97 of your report you  
4 comment on Beta studies on which Mr. Brooks  
5 relies. Could you tell us based on your  
6 industry experience your view of the  
7 usefulness of Beta studies?

8 THE WITNESS: Beta Research Corp  
9 been around forever. I've known Andy Klein  
10 who runs Beta Research forever and Beta runs  
11 this annual - these two annual studies. One's  
12 of basic cable networks and the other is of  
13 digital cable networks, all right? And the  
14 studies are not meant to be comparative,  
15 that's not the purpose of it. In other words,  
16 you're not supposed to compare the results  
17 from the digital one to the basic ones. It's  
18 not the purpose of it. The purpose of it is  
19 to evaluate the programming channel that is of  
20 interest to you within its own study. So you  
21 can compare it to other channels in its study.  
22 To compare across is apples and oranges and

1 again, if you go back to what I was saying a  
2 little earlier about Tennis Channel, my  
3 problems with his size of his audience and  
4 he's comparing this select [REDACTED] percent of the  
5 universe group for Tennis Channel and their  
6 viewing of Tennis Channel versus the [REDACTED]  
7 percent of the universe every man who's  
8 getting Golf and Versus and it's an unfair  
9 comparison. You've got the same problem here.  
10 Digital is just not penetrative like basic  
11 cable is. And so you can't compare across, or  
12 you shouldn't compare across. You can if you  
13 want but you shouldn't because you're not  
14 going to learn anything. You can compare  
15 within it. How did one do in relation to the  
16 other. So that's what Beta is all about. I  
17 have to say to you I never purchased Beta. I  
18 ran programming for MSOs for 18 years, never  
19 once purchased a Beta study. Was presented  
20 with Beta information many, many times, always  
21 by a programming network, always who had an  
22 objective. They wanted something from our

1 company. They were either raising their rate  
2 dramatically and so they're trying to  
3 substantiate oh, look how well we did on the  
4 Beta study, or they were trying to get  
5 launched and so they were saying look how well  
6 we did on the Beta study. I never saw it. We  
7 did a lot of research in our companies, both  
8 CVI and Renaissance, and we either designed  
9 the surveys in-house to attack a certain issue  
10 that we had or we worked with an outside  
11 research company that we hired and attacked  
12 certain issues. And we never used Beta.

13 BY MR. TOSCANO:

14 Q Mr. Egan, I'd like to finish  
15 up shortly and therefore would like to turn to  
16 your opinion that Comcast's carriage of Tennis  
17 Channel is reasonable. Would you please give  
18 us the bases for that opinion briefly?

19 A Sure. Well, it breaks down  
20 really I guess into two things, maybe three.  
21 So I looked at - you'll see my chart which is  
22 a derivation of Mr. Orszag's chart on page 57



1 and you see the top 10 distributors, multi-  
2 channel distributors, and their basic subs and  
3 their Tennis Channel penetration. When I look  
4 at that I say Comcast is fairly typical.  
5 They're almost at the median location of  
6 Tennis Channel penetration. When I look at  
7 how these people are distributing it, 7 out of  
8 10 of these distributors are distributing it  
9 either in what is overtly called a sports tier  
10 or is really a sports tier with some other  
11 services as well, but in my opinion sports is  
12 the driver. So specifically I'm talking about  
13 Cox, you look at Cox throughout the country,  
14 they've got the sports and information pack,  
15 30-35 channels in it, five to seven of them  
16 are not sports meaning the balance, you know,  
17 25 to 30 of them are sports channels. To me  
18 people are buying - most people, not all, but  
19 most people are buying that for the sports.  
20 So I think ■ out of 10 of these people are  
21 carrying it in really what is a sports tier.  
22 So I don't see anything atypical about what

1 Comcast is doing with the sports tier.  
2 Secondly, when I look at the business  
3 proposition given to them in 2009 I think that  
4 their decision to decline that opportunity to  
5 reposition the service is a perfectly  
6 reasonable business decision.

7 Q And in reaching that  
8 conclusion did you consider the affiliation  
9 agreement between Tennis Channel and Comcast?

10 A I did. I read the  
11 affiliation agreement and it's clearly an  
12 extensively drafted agreement. It's -  
13 frankly, it's longer than I would have thought  
14 a startup could obtain from a company like  
15 Comcast. It's got some flexible provisions in  
16 there, favorable provisions for the programmer  
17 where they - Comcast will actually give back  
18 some license fees if it didn't pay, if it  
19 drops some subscribers. I found that to be  
20 somewhat unusual to be honest with you. But  
21 most interestingly it clearly contemplates  
22 tier carriage. It's got a definition of what

1 can be in the tier, it says you can't carry it  
2 a la carte by itself, permits tier, defines  
3 what could be in the tier. The rate card has  
4 breaks in it, discounts, that begin at small  
5 penetrations of Comcast subscriber base  
6 clearly you know designed for a tier. So  
7 again, I found the contract to confirm my  
8 opinion.

9 Q Finally, you indicated that  
10 you considered the history in evaluating the  
11 reasonableness of Comcast's carriage of Tennis  
12 Channel. Can you please explain what you  
13 meant by that?

14 A Yes. I think this is very  
15 important. I really - I really think that we  
16 - again, like I said to you, you know, it's  
17 easy to throw global terms out there, oh,  
18 sports channels, and then you've got to sit  
19 and look and well, wait a minute. If I'm a  
20 customer, what's on the screen? What am I  
21 watching? So again, I think you've got to  
22 think about the totality of circumstances when

1     you're thinking about how does a distributor,  
2     whoever it is, react when programmer comes in  
3     the door. What are the circumstances that  
4     that distributor is facing? What is the  
5     environment of the industry at the time? And  
6     I think it's a very important factor to  
7     realize that the environment, the cable  
8     television and satellite environment in - when  
9     Versus and Golf Channel launched is totally  
10    different than when Tennis Channel launched.  
11    They launched in the mid-'90s. At that time  
12    Versus was OLN. And as most or all of you are  
13    aware, the first half of the '90s, well '92  
14    through into '95 while cable operators  
15    continued to rebuild and upgrade cable systems  
16    and add channel capacity, they really didn't  
17    add channels to any great extent because they  
18    had just been the Telecom Act - the Cable Act  
19    - Communications Act of 1992 had just rate  
20    regulated them along with a lot of other  
21    regulations, and the FCC then promulgated its  
22    rate regulations and we went through a rate

1 freeze and a rate rollback. And so '92, '93,  
2 '94, there was no way that you were going to  
3 get paid anything for using your channel  
4 capacity or to get a return on investment for  
5 the addition of a programming service. So  
6 there wasn't a lot of activity going on. Now,  
7 in '95 what happened is that logjam began to  
8 break. You had the going-forward rules the  
9 FCC promulgated, you had the new product tier  
10 rules. Shortly thereafter you had cable  
11 companies begin to reach what were called  
12 social contracts with the FCC which permitted  
13 them to move forward and add channels and do  
14 things. You had the Telecom Act of 1996 which  
15 immediately deregulated small cable systems  
16 and then over time deregulated the larger  
17 ones. And so cable operators were now able to  
18 add programming, right? And get paid for it.  
19 And so they did so. At the same time  
20 satellite is becoming, you know, is launched  
21 and becoming more and more of a competitor.  
22 Satellite, like any new entrant comes in with

1 everything. That's what new entrants do. And  
2 so cable operators are in - are motivated to  
3 play catchup. So you see many services, Home  
4 & Garden Television, SyFy, Country Music  
5 Television, and I mean the list goes on, but  
6 it certainly includes Versus and Golf or at  
7 the time OLN that ramp up their subscriber  
8 base through the second half of the '90s and  
9 into the early part of two thousand and - the  
10 2000s. We get to that point and now rates  
11 have been raised, consumer rates have been  
12 raised and so competitively now you're  
13 concerned about, you know, am I going to lose  
14 customers if I raise it any further. License  
15 fees have escalated. That pressure is there.  
16 Digital is invented. Digital is invented in  
17 the late '90s, begins to be deployed and so  
18 you can now take channel capacity, you can  
19 turn one channel into eight or ten. You have  
20 more channel space, more bandwidth, you had  
21 space. And so - and that box is expensive.  
22 You know, the box that's going out might cost

1       \$500, the digital box. So the creation of -  
2       so you want the programming, you don't want to  
3       be the guy that doesn't have the Tennis  
4       Channel or you know, whatever it is, so you  
5       create a tier and you say to people you would  
6       like the Tennis Channel? You would like, you  
7       know, whatever that channel is, great. I got  
8       it, buy my sports tier, buy my whatever, and  
9       you move forward. So you're not - you're not  
10      behind content-wise, you have it, it's  
11      available, but it's not adding to what is  
12      already a problematic license fee base that is  
13      helping to push retail rates to an  
14      uncomfortable zone for both you and your  
15      customer.

16               MR. TOSCANO: Your Honor, at this  
17      point well - we have no further questions for  
18      this witness.

19               MR. SCHMIDT: Given how long we've  
20      been going, Your Honor, does it make sense to  
21      take our break now? I've had a special -

22               JUDGE SIPPEL: You're - you're

1 very - of time than I am. It's 11:30. Do you  
2 want to take a lunch break and then come back  
3 and hope it's cool?

4 MR. PHILLIPS: I thought the  
5 morning 5-minute break, Your Honor.

6 JUDGE SIPPEL: Well, we don't do  
7 5-minute breaks. You know that.

8 MR. SCHMIDT: We can do it either  
9 way, Your Honor.

10 JUDGE SIPPEL: No, that's fine.  
11 Well, I'll tell you what. Let's come back at  
12 quarter of.

13 MR. SCHMIDT: Okay.

14 JUDGE SIPPEL: Thank you very  
15 much. We're off the record in recess. Don't  
16 talk to counsel about your testimony.

17 (Whereupon, the foregoing matter  
18 went off the record at 11:26 a.m.)

19 CROSS-EXAMINATION

20 JUDGE SIPPEL: All right. Back on  
21 the record.

22 Mr. Egan, you're still under oath,



1       sir.

2                   THE WITNESS:   Yes, sir.

3                   JUDGE SIPPEL:   Who will be going  
4       next

5                   MR. SCHMIDT:   Me, Your Honor.

6                   JUDGE SIPPEL:   Mr. Schmidt?

7                   MR. SCHMIDT:   Thank you.

8                   BY MR. SCHMIDT:

9               Q       Mr. Egan, we haven't met.   My name  
10       is Paul Schmidt and I represent Tennis  
11       Channel.   It's a pleasure to get to talk with  
12       you.

13                   I'm going to try to be pretty  
14       focused in my questions.   Let me just start  
15       off by asking a little bit about your review  
16       of the television channels.   As I understand  
17       it, one of the primary things you did was you  
18       sat down and you watched different programming  
19       on the different channels, correct?

20               A       Yes, that's correct.

21               Q       As I heard you, you watched about  
22       35 hours of total across the three channels?

1           A       That's correct.

2           Q       Was it divide evenly between the  
3 three channels?

4           A       No. I watched 16« hours of Tennis  
5 Channel. I think nine hours of Golf Channel,  
6 and I think 9« of Versus.

7           Q       As I understand it from your  
8 deposition that was your first real exposure  
9 to Tennis Channel?

10          A       Yes, it was.

11          Q       Okay. Mr. Toscano asked you very  
12 briefly about the Wealth TV case. I just have  
13 a couple of questions about that case. That  
14 was a case where you testified that Mojo and  
15 Wealth TV were not similarly situated?

16          A       Were not substantially similar in  
17 programming and in audience.

18          Q       And one of the primary analyses as  
19 I understand it that you conducted in that  
20 case was what you called a genre analysis?

21          A       That's -- that's the question?

22          Q       Yes.

1           A       Yes, it was.

2           Q       Yes. And as I understand the  
3 genre analysis that you did was you looked at  
4 the types of programming on the two shows and  
5 you said "Is this sports, music, documentary,  
6 food and drink, travel recreation, arts  
7 design, collectibles, correct?

8           A       Yes.

9           Q       And if it's a sports show, it's  
10 called sports if it's a music show, it's  
11 called music and so on and so forth?

12          A       Yes.

13          Q       And that was one of the central  
14 means in that case that you used to  
15 distinguish between the channels, that genre  
16 analysis?

17          A       The genre analysis was one of the  
18 central means as well as the look and feel  
19 analysis, yes.

20          Q       Well, just so I understand it, you  
21 said in your deposition you did not do a look  
22 and feel analysis here, correct, in your

1 report?

2 A I didn't put it in the report. I  
3 made some observations as I was watching it,  
4 but I didn't write that into my report or my  
5 written testimony.

6 Q Okay. Thank you.

7 And as the genre analysis, you did  
8 not do a genre analysis here, did you?

9 A I did not because the genre for  
10 all three of them immediately is sports.

11 Q They're all in the same genre?

12 A They are.

13 Q Okay. And so for that reason it's  
14 fair to say these channels are closer than  
15 Wealth TV and Mojo were, correct.

16 A I -- I wouldn't sign on to that  
17 statement. I think that my analysis was  
18 different because the situation was different.

19 Q Well at least on that one variable  
20 you used they're closer; the genre variable,  
21 correct?

22 A Well, you know, I would have to

1 tell that even then the channels themselves,  
2 as I droned on about earlier, have genres,  
3 sub-genres if you will, within the sports  
4 genre. So we've got non-event programming and  
5 we've got lifestyle programming. Within that  
6 we've got reality programming, within that  
7 we've got events.

8 So, I think that there -- this  
9 word "genre" is too broad a word to really,  
10 you know get at what we're trying to get at  
11 here.

12 Q Well let me go back to what I was  
13 asking about, which is the analysis you did  
14 for Wealth TV. You didn't do the event/non-  
15 event analysis in Wealth TV, did you?

16 A No, I did not.

17 Q You just looked at broad genre,  
18 right?

19 A That's correct.

20 Q And so my question is simply just  
21 on that broad genre look, Tennis Channel  
22 closer to Golf and Versus than Wealth TV was

1 to Mojo, correct, because it's in the same  
2 genre?

3 A If I applied that same metric, it  
4 would be closer.

5 Q Okay. There's one other analysis  
6 that I saw in your testimony in Wealth TV  
7 where as I understood you looked at a separate  
8 third party independent channel called HDNet.  
9 Do you remember that?

10 A I do.

11 Q And as I understood what you were  
12 doing, and tell me if this was right. First  
13 of all, you said HDNet is similar to the Time  
14 Warner channel Mojo, do you remember that?

15 A I don't -- I don't remember that,  
16 no.

17 Q Okay. Well let me ask you if you  
18 remember this: You actually compared how Time  
19 Warner treated its channel versus how it  
20 treated this other comparable independent  
21 channel, do you remember that?

22 A In general I remember that. I

1 don't remember the specifics of that  
2 whatsoever.

3 Q Were there any non-Comcast  
4 independent channels other than Tennis Channel  
5 that you looked at in this case?

6 A I did not look at other channels  
7 in this case.

8 Q Okay. Let's look at your  
9 testimony. Do you still have that in front of  
10 you sir?

11 A Yes, I do.

12 Q Okay.

13 JUDGE SIPPEL: When you say you  
14 didn't look at other channels, he was asking  
15 just about independents?

16 MR. SCHMIDT: Yes.

17 THE WITNESS: Right.

18 MR. SCHMIDT: Yes.

19 BY MR. SCHMIDT:

20 Q My question is there was another  
21 independent channel unrelated to Wealth TV,  
22 unrelated to Mojo that you looked at in the

1       Wealth TV case to see well how does Time  
2       Warner treat other independent channels.  
3       That's not an analysis you did here.

4               A       I did not.  No.

5               Q       Comcast --

6                       JUDGE SIPPEL:  You mentioned  
7       "droning on."  I want you to know that you've  
8       been droning at my request.

9                       THE WITNESS:  Oh, okay.  I feel  
10       better.  I do have a habit of doing it, so--

11                      BY MR. SCHMIDT:

12               Q       All right.  Do you have your  
13       report in front of you, your testimony rather?

14               A       My testimony.

15               Q       You have Exhibit 77?  Let's start  
16       off with page 6 paragraph 8.  And on page 6  
17       paragraph 8 of your report you list three  
18       things that you say are the most important  
19       considerations for an MVPD, and these are most  
20       important considerations in determining  
21       whether to carry a channel, is that right?

22               A       Correct.



1 Q Okay. And the three things are:

2 (1) Content;

3 (2) Ownership and management,

4 and;

5 (3) Cost and revenue potential.

6 Correct?

7 A Correct.

8 Q I take it those are things you  
9 developed over your years of experience in the  
10 industry, your knowledge of these being the  
11 most important considerations for an MVPD?

12 A Correct.

13 Q Are they factors that you applied  
14 at Cablevision?

15 A Yes, they are.

16 Q And I take it these are the  
17 factors you would expect a cable company to  
18 apply in considering whether to carry a  
19 network?

20 A Yes, I would.

21 Q And you specifically think Comcast  
22 should have considered these factors in its

1 2009 carriage decision for Tennis Channel?

2 A No, I didn't say that.

3 Q Well, let me ask you that  
4 question: Do you think that Comcast should  
5 have considered each of these factors in  
6 making its decision with respect to the Tennis  
7 Channel?

8 A In what year?

9 Q At anytime.

10 A Well, I -- I would think that they  
11 would have considered all of these factors in  
12 2005 when they negotiated the contract to add  
13 the channel to determine what's this thing  
14 about, and what value is it going to bring me,  
15 and who is the manager and are they going to  
16 stick around? Am I going to launch something  
17 and then have to explain to my customers  
18 they've gone out of business? Is it going to  
19 morph into something else? How do I carry it  
20 in a way that I'm not just loading on expense  
21 to my customer-base, so and so forth.

22 So certainly I when I'm deciding